No. 03-60080

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

CITY OF JACKSON, MISSISSIPPI,

Defendant - Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES AS APPELLEE

DUNN O. LAMPTON
United States Attorney
Southern District of Mississippi

MITZI DEASE PAIGE
Assistant United States Attorney
188 E. Capitol Street
Suite 500
Jackson, Mississippi 39201
(601) 973-2840

R. ALEXANDER ACOSTA
Assistant Attorney General

DENNIS J. DIMSEY
KARL N GELLERT
Attorneys
Department of Justice
Civil Rights Division
Appellate Section - PHB 5013
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(202) 353-4441

STATEMENT REGARDING ORAL ARGUMENT

The United States does not oppose oral argument in this case.

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JURISDICTIONAL STATEMENT

This is an appeal from the final order of the district court awarding damages for the City of Jackson's violation of a Consent Decree. This action was brought by the United States under the Fair Housing Amendments Act, 42 U.S.C. 3601 *et seq.*, and the district court had jurisdiction over that suit under 28 U.S.C. 1331 and 1345 and under 42 U.S.C. 3614(a). The district court had jurisdiction over the contempt proceeding under the enforcement provisions of the Consent Decree and its inherent power to enforce its orders, see *Spallone* v. *United States*, 493 U.S. 265, 276 (1990) ("courts have inherent power to enforce compliance with their lawful orders through civil contempt") (internal quotation marks omitted). This

Court has jurisdiction over this appeal from the district court's final order under 28 U.S.C. 1291.

ISSUES PRESENTED FOR REVIEW

1. Whether the district court abused its discretion in ordering the City of Jackson, as a sanction for its violation of the parties' Consent Decree, to pay approximately $39,000 to the United States for its attorney's fees and expenses.

2. Whether the district court abused its discretion in ordering the City of Jackson, as a sanction for its violation of the Consent Decree, to pay approximately $13,000 in attorney's fees to the non-party charitable corporation injured by the City's violation.

STATEMENT OF THE CASE

The City of Jackson appeals from the district court's order awarding expenses and attorney's fees to the United States and to a non-party charitable corporation as a sanction for the City's violation of the 1997 Consent Decree that settled this case. That Consent Decree settled the claim brought by the United States in 1996 against the City, alleging violation of the Fair Housing Amendments Act (FHAA), 42 U.S.C. 3601 *et seq*. The Consent Decree imposed a permanent injunction against the City and specifically authorized an award of damages and attorney's fees for any future violation.

In September and November 2000, the City denied the request of Christians In Action, a non-profit charitable corporation, for a special use permit so that it could relocate its emergency shelter for abused and neglected children. In January

2001, the United States moved the district court to find the City in contempt for violating the Consent Decree by denying Christians In Action's requested permit. (The City granted the permit two weeks later.)

On September 27, 2001, the district court issued a brief order finding the City in contempt and directing the United States to submit a motion for damages and costs. On November 1, 2001, the City of Jackson filed a notice of appeal from this order, which was assigned No. 01-60890. On January 14, 2003, pursuant to Fed. R. App. P. 42, this Court granted the City's motion to dismiss that appeal.

On October 23, 2002, the district court issued a lengthy memorandum opinion and order explaining its finding of contempt and issued a memorandum opinion and order awarding the United States and Christians In Action attorney's fees and expenses. On December 20, 2002, the City of Jackson timely filed a notice of appeal from the orders and final judgment entered by the district court. On June 17, 2003, pursuant to 5th Cir. R. 42, this Court dismissed this appeal for the City's not having timely filed its brief, and on July 14, 2003, this Court granted the City's motion to reinstate the appeal.

STATEMENT OF THE FACTS

1. The 1997 Consent Decree.

The United States brought this action against the City of Jackson in 1996, alleging that the City had violated the provisions of the Fair Housing Amendments Act (FHAA), 42 U.S.C. 3601, *et seq*. Specifically, the suit alleged that through its zoning ordinance and policies, the City violated the FHAA by refusing to make

reasonable accommodations necessary to afford disabled persons equal housing opportunities. R. 431-432/RE Tab 7.[1] The suit arose from the City's denial of a special use permit to Cyprus Cove, a small, non-profit group home that provided care for elderly women suffering from Alzheimers. R. 432/RE Tab 7. Pursuant to 42 U.S.C. 3614(e), the operator of Cyprus Cove, Clementine Michael, intervened. On October 14, 1997, the district court granted the motions of the United States and Ms. Michael for partial summary judgment, finding that the City had violated the FHAA. R. 432-433/RE Tab 7. Thereafter, the parties entered into a Consent Decree settling the case, which the district court approved and entered on December 18, 1997. R. 438/RE Tab 7.

The Consent Decree provided three kinds of relief: First, it imposed a prohibitive injunction requiring the City to refrain from specific discriminatory acts, which prohibitions track the anti-discrimination language of the FHAA. R. 433-434/RE Tab 7. Second, it imposed an affirmative injunction requiring the City to amend its zoning ordinance to permit group homes for disabled persons in R-1 (single-family residential) districts. Homes caring for six or fewer persons were to be permitted uses, that is, no special permit is required, while homes for between seven and twelve persons were to be uses for which a special use permit could be obtained. R. 434-435/RE Tab 7. (The City subsequently complied with

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[1] This brief uses the following abbreviations: "R." refers to record and "RE" refers to the Appellant's record excerpts. "Supp. R." refers to the Supplemental Record and "3d Supp. R." refers to the Third Supplemental Record.

this requirement by amending its zoning ordinance. R. 544/RE Tab 4.) Third, the Consent Decree required the City to pay $230,000 to persons aggrieved by the City's discrimination. Of that amount, approximately $160,000 went to Ms. Michael, $50,000 went to her attorney, and the rest was divided among 11 individuals. R. 436-437/RE Tab 7.

Finally, the Consent Decree provided specific and broad remedies for non-compliance. The Decree stated that "in the event of any other material act by the City violating any provision of this Consent Decree, the United States * * * may move this Court to impose any remedy authorized by law or equity, including but not limited to * * * damages, costs and/or attorneys' fees which may be occasioned by the City's violation of this Consent Decree." R. 437-438/RE Tab 7.

2. Christians In Action's Requests For A Special Use Permit.

Christians In Action is a Mississippi non-profit charitable corporation that is licensed by the Mississippi Department of Human Services to provide emergency shelter for abused and neglected children. R. 546/RE Tab 4. It has provided such services since 1977. *Ibid*. It provides care for children between infancy and twelve years of age, although most children at the shelter are no older than five. *Ibid*. Christians In Action's shelter is the only one for such children in Jackson, and it is where the Jackson Police Department has to take children who are found abandoned or physically or sexually abused. The Jackson Police Department therefore works closely with Christians In Action. *Ibid*. On average, there are seven children at the shelter, and a child may stay there up to 45 days while the

Hinds County Youth Court and social services agencies arrange to provide foster care. R. 547/RE Tab 4.

In the district court, the City conceded that the children for whom Christians In Action cares are "handicapped" within the meaning of the FHAA anti-discrimination provisions and the City's own zoning ordinance. R. 547/RE Tab 4. The district court noted the numerous disabilities suffered by children at the shelter, including "mental retardation, various types of psychological disorders, confinement to a wheelchair, cerebral palsy, epilepsy, and blindness," and that "[m]any of the problems experienced by these children have resulted from physical abuse, mental abuse, sexual abuse, neglect, or deprivation." *Ibid.*

Christians In Action desired to move its shelter to a new and better location within Jackson, which was within an R-1 zone. Because the shelter would provide care for seven to twelve children at any one time, Christians In Action had to apply for a special use permit. The property for which Christians In Action sought a permit is located in a residential subdivision. R. 548-549/RE Tab 4. The property contained a three bedroom home on a 3.14 acre wooded lot, which was completely fenced. *Ibid.* Christians In Action did not propose to change the residential appearance of the home or property. R. 549/RE Tab 4.

Christians In Action first sought a special use permit in 1998. On May 21, 1998, Christians In Action applied to the City for a special use permit to operate its shelter from the Brookhollow Place property. This application did not provide evidence that the children to be served were disabled and it did not request a

reasonable accommodation for disabled persons under the zoning ordinance. That request was denied on September 2, 1998, and Christians In Action sought reconsideration so that it could present evidence that the children were disabled. The City directed Christians In Action to submit a new application. R. 550-551/RE Tab 4. The United States has not asserted that this denial was a violation of the Consent Decree.

Consistent with the City's directive, on May 19, 2000, Christians In Action again applied for a special use permit and included in the application substantial support to show that the children to be served were disabled, as well as a report showing that the shelter would have no negative effect on the other residential properties. See *ibid*. On June 12, 2000, the City's Planning Board, through a "staff report," recommended approving the requested permit, noting that the use was consistent with the definition of a group home for handicapped persons under the City's zoning ordinance. R. 551/RE Tab 4.

On June 28, 2000, the Planning Board held a hearing on the requested permit. *Ibid*. At that hearing, several area landowners opposed the permit. Some of the opposition was entirely misdirected because some residents mistakenly believed that the request was for a rezoning to permit commercial businesses. R. 552-553/RE Tab 4. The Planning Board staff reiterated that the requested permit would not change the R-1 zoning, and the Deputy City Attorney reminded the Planning Board of the Consent Decree and the provisions of the zoning ordinance providing for group homes. R. 553-554/RE Tab 4. The Planning Board

nonetheless voted to deny the permit. R. 554/RE Tab 4. The notice of the denial stated the reason as: "The Board was of the opinion that granting the requested Use Permit would adversely affect the surrounding properties, and otherwise be detrimental to the public welfare." *Ibid*.

On September 6, 2000, the City Council considered the requested special use permit based on the record from the Planning Board. *Ibid.* At that meeting, area landowners again voiced their opposition to the requested permit, emphasizing that they wished their area to remain residential, and some landowners were still confused about whether the requested permit involved a rezoning. R. 554-555/RE Tab 4. One councilman also spoke against the permit. R. 555-556/RE Tab 4. The City Council voted to deny the requested permit. R. 556/RE Tab 4.

On September 22, 2000, the United States sent a letter to the City regarding the denial of Christians In Action's requested permit and asked for the City by October 13, 2000 to explain its denial, including whether the City had concluded that the children to be served by the home were not disabled and what evidence, if any, established that the requested permit was not a reasonable accommodation under the Consent Decree. R. 556-557/RE Tab 4. The City did not respond by October 13, but on October 24, the City Council voted to reconsider the requested special use permit. R. 557/RE Tab 4. On November 7, the City Council again held a hearing on the matter. The attorneys again reminded the City Council of the requirements of the law, and the area landowners again expressed their

opposition. R. 557-558/RE Tab 4. The requested permit was denied by a tied vote. R. 559/RE Tab 4.

On December 8, 2000, the City responded to the letter of the United States but did not address the specific issues raised by that letter. The City stated: "It is the City of Jackson's position that its records and orders speak for themselves. It is the City's position that it acted properly in denying the above referenced petition." R. 559/RE Tab 4.

On January 16, 2001, the United States filed a motion with the district court seeking to have the City found in contempt for violating the Consent Decree. On January 23, 2001, the City Council again voted to reconsider Christians In Action's requested special use permit, and on January 30, 2001, the Council voted to approve it.

3. The Contempt Proceedings.

The United States moved the district court for summary judgment on the issue of the City's contempt. On September 20, 2001, the district court held a hearing on the pending contempt motion and the court found the City to have violated the Consent Decree. The court entered a brief order on September 27, 2001. R. 518-520/RE Tab 3. Because the City had already granted the requested use permit, the court directed the United States to file a motion for damages resulting from the contempt. The United States requested approximately $39,000 in fees and expenses for itself and approximately $13,000 in fees for Christians In Action. The United States requested that it be compensated for its attorney's time

at the rate of $125 per hour. A hearing on that motion was held on November 15, 2001. At that hearing, the City conceded that its denial of the requested permit had violated both the Consent Decree and the FHAA. See 3d Supp. R. at S38. The City objected to some of the fees requested by the United States as inadequately supported, and the United States agreed to drop those fees from its request. R. 531-532; 3d Supp. R. at S4. The City also objected to the United States' being compensated at a rate higher than the actual salary paid to its attorney, which amounted to about $55 per hour. And the City objected to Christians In Action receiving any compensation. R. 521-528; 3d Supp. R. at S26-S35.

On October 23, 2002, the district court issued a lengthy memorandum opinion and order setting forth its finding of contempt against the City. R. 541-580/RE Tab 4. That same day, the court also entered an order awarding the United States $38,125 in attorney's fees and expenses in the amount of $797.50. It awarded Christians In Action $13,042.80 in costs, which were the amount of its attorney's fees. R. 581-584/RE Tab 5.

The City of Jackson timely appealed from the district court's orders. Supp. R. at S1/RE Tab 2.

SUMMARY OF THE ARGUMENT

1. In the district court, the City of Jackson conceded that its denial of Christians In Action's request for a special use was a violation of the Consent Decree. The Consent Decree specifically provides that if the City violates its

terms, the district court may award any remedy authorized by law or equity, including damages and attorney's fees. The approximately $39,000 in attorney's fees and expenses awarded to the United States is well within the district court's broad discretion.

2. Similarly, the district court did not abuse its discretion in awarding attorney's fees to Christians In Action. The Consent Decree expressly permits the district court to award any remedy provided by law, including damages caused by the City's violation. The FHAA expressly permits the United States to seek damages on behalf of third-parties, such as Christians In Action, who are injured by a defendant's violation of the Act. The City does not dispute that it violated the terms of the Consent Decree, which mirror the requirements of the Act, and that as a consequence, Christians In Action incurred the attorney's fees awarded by the district court. The modest award of attorney's fees to Christians In Action was well within the district court's broad discretion.

ARGUMENT

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY AWARDING ATTORNEY'S FEES AND EXPENSES AS COMPENSATION FOR THE CITY'S VIOLATION OF THE CONSENT DECREE

A. Standard of Review.

This Court reviews a district court's finding of contempt and its award of damages for that contempt only for an abuse of discretion. *American Airlines, Inc.* v. *Allied Pilots Ass'n*, 228 F.3d 574, 578 (5th Cir. 2000), *cert. denied*, 531 U.S.

1191 (2001). This Court reviews the district court's underlying factual findings for clear error and reviews its legal conclusions *de novo*. *Ibid.*[2]

B. The District Court Did Not Abuse Its Discretion In Awarding The United States Its Attorney's Fees And Expenses.

1. The Consent Decree Permitted The District Court To Impose Any Remedy Authorized By Law Or Equity For The City's Violation.

In the district court, the City of Jackson conceded that it had violated the Consent Decree. It argues on appeal, however, that neither the United States nor Christians In Action is entitled to any compensation for the costs that that violation imposed. The City's arguments are without merit.

Although consent decrees are in the nature of contracts, they are enforceable judicial orders. See *United States* v. *Chromalloy Am. Corp.*, 158 F.3d 345, 349 (5th Cir. 1998). In this case, this Court need not consider the full extent of the district court's inherent power to enforce its orders because the Consent Decree specifically provides broad remedies for a violation. It provides:

> Upon any failure of the City, whether willful or otherwise, to perform in a timely manner any act required by this Consent Decree, or in the event of any other material act by the City violating any provision of this Consent Decree, the United States or plaintiff-intervenor may

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[2] The City asserts that the summary judgment standard of review is appropriate here. Br. at 14-15. But the district court granted summary judgment to the United States only on the issue of whether the City violated the Consent Decree. See R. 520/RE Tab 3. The City admitted the violation in the district court and does not dispute that finding on appeal. Thus, the summary judgment standard is not relevant. The issue on appeal is what was the appropriate remedy for the City's violation of the Consent Decree, and as noted, that issue is reviewed for an abuse of discretion.

> move this Court to impose any remedy authorized by law or equity, including but not limited to an order requiring performance of an act, deeming an act to have been performed or awarding any damages, costs and/or attorneys' fees which may be occasioned by the City's violation of this Consent Decree.

R. 437-438/RE Tab 7. The district court's order awarding attorney's fees was thus expressly authorized by the Consent Decree.

Moreover, even if the Consent Decree were silent as to attorney's fees, it is well settled that the awarding of attorney's fees is within the discretion of the district court when imposing sanctions for civil contempt. Civil contempt sanctions are either coercive or compensatory. *American Airlines*, 228 F.3d at 585. The district court has "broad discretion in the assessment of damages in a civil contempt proceeding." *Ibid.* (internal quotation marks omitted). And those damages can include attorney's fees and costs, including attorney's fees to the United States. *Northside Realty Assocs., Inc.* v. *United States*, 605 F.2d 1348, 1356 n.23 (5th Cir. 1979); see also *Norman Bridge Drug Co.* v. *Banner*, 529 F.2d 822, 827 (5th Cir. 1976) ("Compensatory civil contempt reimburses the injured party for the losses and expenses incurred because of his adversary's non-compliance. This includes losses flowing from noncompliance and expenses reasonably and necessarily incurred in the attempt to enforce compliance."); *Cook* v. *Ochsner Found. Hosp.*, 559 F.2d 270, 272 (5th Cir. 1977) ("Discretion, including the discretion to award attorneys' fees, must be left to a court in the enforcement of its decrees.").

There is thus no basis for the City to argue, as it does for the first time on appeal, that, as a matter of law, attorney's fees are unavailable to the United States in this case. Br. at 15-22. While the City is correct that the FHAA's fee-shifting provision does not provide for fees to the United States as a prevailing party, see 42 U.S.C. 3614(d)(2), that provision does not address the scope of the district court's inherent contempt power or its discretion in fashioning a remedy under the express provisions of the Consent Decree. Indeed, this Court has previously recognized in a case arising under the Fair Housing Act, that although the United States might not be entitled to recover damages as a "prevailing party" under the statute, that in no way prevents the United States from recovering attorney's fees in a civil contempt proceeding. See *Northside Realty*, 605 F.2d at 1356 n.23.

The City also asserts that because its contempt was not "willful," the district court had no authority to order it to pay attorney's fees. That is clearly not the law. As noted above, the Consent Decree specifically authorized an award of attorney's fees for a violation "whether willful or not." Moreover, the district court has the inherent power to award fees as compensation for civil contempt, and civil contempt need not be based on a finding of willfulness. See *American Airlines*, 228 F.3d at 581 ("The contemptuous actions need not be willful so long as the contemnor actually failed to comply with the court's order."); see also *Cook*, 559 F.2d at 272 ("[i]t matters not whether the disobedience is willful"); *ibid*. ("the mental state of the violator should not determine the level of compensation due").

The City relies on *Fleischmann Distilling Corp.* v. *Maier Brewing Co.*, 386 U.S. 714, 718 (1967), for the proposition that "[t]he only other exception to the American Rule available to the United States is that one which allows for an award of attorney's fees for the willful disobedience of a court order." Br. at 17. The City asserts that the district court could thus not award attorney's fees except upon a showing of clear and convincing evidence that its violation of the Consent Decree was willful. Br. 17-18. There is no distinction in the case law between awarding attorney's fees for "willful contempts" as opposed to other contempts. The issue in *Fleishmann Distilling* was whether a party in a suit under the Lanham Act could recover attorney's fees. Because no provision of the statute provided for an award of fees, the Court held that they were not recoverable. In analyzing the issue, the Court noted that there were various exceptions to the general rule that each party bears its own attorney's fees. One such exception, the Court noted, was that "in a civil contempt action occasioned by willful disobedience of a court order an award of attorney's fees may be authorized as part of the fine to be levied on the defendant." 386 U.S. at 718 (citing *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U.S. 399, 426-428 (1923)). That is the extent of the Court's discussion of the issue. The *Fleischmann Distilling* Court thus had no occasion to address, and did not address, what must be shown before a district court can award attorney's fees as compensation for civil contempt.[3] The City has thus offered no

[3] The district court concluded that the City's willful violation of the Consent Decree gave it the authority to award attorney's fees to Christians In

authority to contradict this Court's clear precedent that attorney's fees are available as compensatory damages in civil contempt proceedings.

2. The District Court Did Not Abuse Its Broad Discretion By Awarding The United States Attorney's Fees Based On A Rate of $125 Per Hour.

The district court awarded the United States attorney's fees calculated as the number of hours worked by one of the government lawyers assigned to the case multiplied by $125 per hour. The government attorney had 28 years' experience, and the rate of $125 per hour was thus well within the "prevailing market rate" for attorneys with like experience. See 3d Supp. R. at S7 (discussing district court's prior decision holding that the prevailing rate for an attorney with five years' experience was $150 and for one with ten years' experience was $175). The City does not argue on appeal that the hourly rate of $125 was not within the "prevailing market rate." Rather, the City argues that even if the United States is entitled to an award of attorney's fees, the government should be limited to recovering its "actual expenses." Br. at 22. The City further asserts without any supporting authority that the only "actual expenses" to which the United States is entitled is payment of its attorney's salary. Because that salary amounts to approximately $55 per hour, the City asserts that the rate of $125 hour is a "windfall."

Action, see R. 583-584, but that was an alternative basis for its conclusion, see R. 582-583; 3d Supp. R. at S45-S46 (rejecting City's argument that Consent Decree prohibited damage award to injured third-party).

It is clear that the payment of the attorney's salary is merely one part of the "actual expense" the United States, or any government entity or other institution that employs its own attorneys, incurs when it has to devote attorney resources to enforcing a consent decree. The United States also incurs expenses for paying the health care and other benefits provided to its attorneys. And, of course, it incurs substantial overhead in having to provide office space, support staff, and equipment so that its attorneys can do their work. As the Seventh Circuit recognized, the "cost" incurred in such situations is the cost of devoting these resources to a particular proceeding, rather than having them available for other work. See *Wisconsin* v. *Hotline Indus., Inc.*, 236 F.3d 363, 365 (7th Cir. 2000) ("salaried government lawyers, like in-house and non-profit counsel, do incur expenses if the time and resources they devote to one case are not available for other work"). The City cites no case, and the United States is aware of none, that would suggest that the United States was required to prove its "actual expenses" with some sort of mathematical precision. In fact, the case law is to the contrary.

In *Blum* v. *Stenson*, 465 U.S. 886, 892 (1984), the Court rejected an argument similar to the City's that in a civil rights action awarding attorney's fees calculated at the prevailing market rate to a private non-profit law office amounted to a "windfall." And in *Napier* v. *Thirty or More Unidentified Federal Agents*, 855 F.2d 1080, 1092-1093 (3d Cir. 1988), the court relied on *Blum* to conclude that when the United States was awarded sanctions under Fed. R. Civ. P. 11, the appropriate measure of the value of the Assistant United States Attorney's time

was the prevailing market rate. The court held that it was not an abuse of discretion to award a rate of $100 per hour for an Assistant United States Attorney who had been practicing for five years. See 855 F.2d at 1092 n.9 & 1093. And this Court has emphasized the broad discretion of the district court in assessing damages in a civil contempt proceeding. *American Airlines*, 228 F.3d at 585; accord *Colonial Williamsburg Found.* v. *Kittinger Co.*, 38 F.3d 133, 138 (4th Cir. 1994) (in civil contempt case, "[i]t is well settled that the district courts have considerable discretion in awarding attorneys' fees"). The City has offered no authority to suggest that the district court abused its broad discretion in compensating the United States at the rate of $125 per hour for its attorney's time.

C. The District Court Did Not Abuse Its Discretion In Awarding Christians In Action Costs In the Amount of Its Attorney Fees.

The City does not dispute the rate or amount of fees awarded to Christians In Action. It disputes only the district court's authority to award such fees. But the City's argument wholly ignores the language of the Consent Decree. As noted above, the Consent Decree authorizes the district court to "impose any remedy authorized by law or equity, including but not limited to * * * any damages, costs and/or attorneys' fees which may be occasioned by the City's violation of this Consent Decree." R. 437-438/RE Tab 7. The district court's awarding approximately $13,000 in attorney's fees to Christians In Action is a remedy available under the Consent Decree because it is a remedy "authorized by law."

In a civil action brought by the United States, the FHAA authorizes a court to award appropriate injunction relief, see 42 U.S.C. 3614(d)(1)(A), and the court "may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved," 42 U.S.C. 3614(d)(1)(B). The City asserts without authority that such "monetary damages" to aggrieved persons do not include attorney's fees resulting from the violation. Br. 28 n.16. Even if there were any reason to read "monetary damages" so narrowly — and the City has shown none — Section 3614(d)(1)(B) identifies monetary damages as just one example of "such other relief as the court deems appropriate." The City has provided no authority to suggest that the district court could not appropriately compensate an aggrieved person for its "monetary damages" in the form of actual attorney's fees incurred because of a violation. Cf. *United States* v. *City of Hayward*, 36 F.3d 832, 839 (9th Cir. 1994) (district court does not have discretion under Section 3614(d)(1)(B) to refuse to award compensatory damages where actual damages are proven), *cert. denied*, 516 U.S. 813 (1995). Because the awarding of damages to Christians In Action is a remedy authorized by law, it was a remedy available to the district court under the language of the Consent Decree.

The City does not address the remedy provision of the Consent Decree. Rather, it argues that this Court in *Northside Realty* "held clearly that a non-party to a judgment may not recover compensatory damages in a contempt proceeding to enforce the terms of a prior judgment." Br. at 23-24. Actually, the precise issue before the Court was whether the district court abused its discretion in declining to

award such compensatory damages. The Court stated: "While we need not foreclose altogether the possibility of third party compensatory relief in civil contempt cases, we agree with the District Court that compensatory damages for nonparties ought not to be granted here as part of the Government's remedy in a civil contempt proceeding." 605 F.2d at 1356. Certainly in analyzing the issue, this Court doubted that such relief would ever be appropriate. See *id*. at 1356-1358. But this Court need not reconsider *Northside Realty* to uphold the award of damages to Christians In Action. As discussed above, the awarding of damages to Christians In Action was a remedy authorized by the Consent Decree because it is a remedy authorized "by law." The FHAA expressly authorizes damages awards to injured non-parties, see 42 U.S.C. 3614(d)(1)(B), although at the time the Court decided *Northside Realty*, such relief was not available under the Fair Housing Act, see 605 F.2d at 1355-1356. And the City has not shown that the award of $13,000 was an abuse of the district court's broad discretion under the Consent Decree.

CONCLUSION

This Court should affirm the district court's award of attorney's fees and expenses to the United States and Christians In Action.

Respectfully submitted,

DUNN O. LAMPTON
United States Attorney
Southern District of Mississippi

R. ALEXANDER ACOSTA
Assistant Attorney General

MITZI DEASE PAIGE
Assistant United States Attorney
188 E. Capitol Street
Suite 500
Jackson, Mississippi 39201
(601) 973-2840

DENNIS J. DIMSEY
KARL N. GELLERT
Attorneys
Department of Justice
Civil Rights Division
Appellate Section – PHB 5013
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
(202) 353-4441

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2003, two copies of the foregoing Brief For The United States As Appellee, and a diskette containing the electronic version of the brief, were served by First Class Mail, on:

Terrell S. Williamson
Deputy City Attorney
P.O. Box 17
455 East Capitol
Jackson, MS 39205

_____
KARL N. GELLERT
Attorney